

Supreme Court of the State of New York
County of New York

THE PEOPLE OF
THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of
the State of New York,

Plaintiff,

v.

MAJOR ENERGY SERVICES LLC
and MAJOR ENERGY ELECTRIC
SERVICES LLC,

Defendants,

and

VIA RENEWABLES, INC. f/k/a
SPARK ENERGY, INC.,

Relief Defendant.

SUMMONS

Index No.:

IAS Part _____

Plaintiff designates New York
County as the Place of Trial

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer in this action and serve a copy of your answer, or if the complaint is not served with the summons to serve a notice of appearance, on the plaintiff's attorney within twenty (20) days after the service of the summons, exclusive of the day of service. If the summons is not personally served upon you, or if the summons is served upon you outside of the State of New York, then your answer or notice of appearance must be served within

thirty (30) days. In case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial.

Venue properly lies in New York County pursuant to Section 503 of the CPLR because Plaintiff maintains an office at 28 Liberty Street in New York County.

Dated: January 19, 2022
New York, NY

Respectfully submitted,

Attorneys for the People of the State of New York

LETITIA JAMES

Attorney General of the State of New York
Jane M. Azia (New York Bar Number: 1539600)
*Bureau Chief for the Bureau of Consumer Frauds
and Protection*

Laura J. Levine (New York Bar Number: 2337368)
*Deputy Bureau Chief for the Bureau of Consumer
Frauds and Protection*

/s/ Joseph P. Mueller

New York Bar Number: 5079389
Assistant Attorney General
Office of the Attorney General
28 Liberty Street
New York, NY 10005
Telephone: (212) 416-8321
Fax: (212) 416-6003
Email: joseph.mueller@ag.ny.gov

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COMPLAINT

The People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York (Plaintiff or OAG), respectfully allege the following against Defendants Major Energy Services LLC and Major Energy Electric Services, LLC (together, Major Energy) and Relief Defendant Via Renewables, Inc. f/k/a Spark Energy, Inc. (Via Renewables).

Introduction

1. From at least 2011 through at least 2016, Major Energy, in violation of New York state law and the Uniform Business Practices (UBP) issued by the New York State Public Service Commission (PSC), employed fraudulent and deceptive business practices, including false and misleading advertising, to market and sell retail natural gas and electricity services to consumers in New York. Among other practices, Major Energy marketed and advertised its services as offering savings when, in reality, consumers often paid more than they would have paid to their distribution utility. Major Energy also engaged in deceptive, high-pressure marketing and sales practices, including obtaining information under false pretenses and signing up consumers for unwanted services without their consent. Major Energy's base of New York consumers consisted of tens of thousands of electric customers as well as tens of thousands of gas customers.

2. OAG brings this action for an injunction to stop Major Energy's misleading advertising and marketing practices, as well as for legal and equitable relief to address Major Energy's fraudulent and unlawful conduct, including restitution for harmed consumers and disgorgement. In addition, OAG seeks damages, the imposition of civil penalties, and costs.

Parties and Jurisdiction

3. Plaintiff is the People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York.

4. Plaintiff brings this action pursuant to New York Executive Law Section 63(12) and New York General Business Law (GBL) Sections 349, 349-d and 350. Executive Law Section 63(12) empowers the OAG to seek injunctive relief, restitution, disgorgement, damages, and costs when any person or entity has engaged in or otherwise demonstrated repeated or persistent fraudulent or illegal acts in the transaction of business. GBL Article 22-A, Sections 349 and 350, empowers the OAG to seek injunctive relief, restitution, civil penalties and other equitable relief, including disgorgement, for deceptive acts or practices and false advertising.

5. Defendant Major Energy Services LLC is a limited liability company organized under the laws of, and registered to do business in, the State of New York. Major Energy Services LLC is an energy services company (ESCO) authorized by the PSC to provide retail natural gas and electricity products to residential and commercial customers in New York State. Until at least 2016, Major Energy Services LLC's principal offices had been located at 100 Dutch Hill Road, Suite 230, Orangeburg, NY 10962. They are now located at 12140 Wickchester Lane, Suite 100, Houston, TX 77079.

6. Defendant Major Energy Electric Services LLC is a limited liability company organized under the laws of, and registered to do business in, the State of New York. Major Energy Electric Services LLC is an ESCO authorized by the PSC to provide Retail Natural Gas and Electricity Services to residential and commercial customers in New York State. Until at least 2016, Major Energy Electric Services

LLC's principal offices had been located at 100 Dutch Hill Road, Suite 230, Orangeburg, NY 10962. They are now located at 12140 Wickchester Lane, Suite 100, Houston, TX 77079.

7. Relief Defendant Via Renewables, Inc. is a foreign corporation organized under the laws of the State of Texas. Via Renewables, Inc's principal offices are located at 12140 Wickchester Lane, Suite 100, Houston, TX 77079.

8. Defendants Major Energy Services LLC and Major Energy Electric Services LLC are wholly owned subsidiaries of Relief Defendant Via Renewables.

9. Spark Energy, Inc. acquired Major Energy in August 2016.

10. In August 2021, Spark Energy, Inc. changed its name from Spark Energy, Inc. to Via Renewables, Inc.

11. Relief Defendant Via Renewables continues to benefit from the deceptive acts and practices, including by benefiting from contracts that were fraudulently and deceptively obtained from consumers by Major Energy prior to Via Renewable's acquisition of Major Energy. From at least that time, Via Renewables had knowledge of these deceptive acts and practices.

12. Relief Defendant Via Renewables has received, directly or indirectly, funds or other assets from Defendants Major Energy Services LLC and Major Energy Electric Services LLC that are traceable to funds obtained from consumers through the fraudulent, deceptive, and illegal acts and practices described herein.

13. Relief Defendant Via Renewables has no legitimate claim to these funds or assets and will be unjustly enriched if it is not required to disgorge funds

or the value of the benefit it received as a result of Defendants Major Energy Services LLC and Major Energy Electric Services LLC's fraudulent, deceptive, and illegal acts and practices. As such, Defendant Via Renewables is a necessary party for complete relief.

14. The OAG has provided pre-litigation notice to Defendants pursuant to GBL Sections 349(c) and 350. The OAG also sent Defendants' counsel a courtesy copy of the pre-litigation notice by email.

15. Venue properly lies in New York County pursuant to Section 503 of the CPLR because Plaintiff maintains an office at 28 Liberty Street in New York County.

Facts

The Retail Energy Industry in New York State

16. Beginning in 1996, the New York State Public Service Commission permitted private energy service companies, called ESCOs, to sell natural gas and electricity directly to New York residential and business customers. The goals of allowing ESCOs were to provide consumers with a choice of providers and services, lower prices, and promote competition.

17. New ESCOs must first apply to and be deemed eligible by the PSC in order to sell electricity or natural gas to residential and business customers. To standardize practices among Distribution Utilities¹ and ESCOs, and to protect

¹ Herein, "Distribution Utility" means an electricity or natural gas corporation owning, operating or managing electric or natural gas facilities for the purpose of distributing natural gas or electricity to end users in New York.

consumers, the PSC adopted the Uniform Business Practice (UBP) standards, which it has amended multiple times over the years to provide greater protections for energy consumers.

18. Consumers can purchase electricity or natural gas from either an ESCO or their local Distribution Utility. In either case, however, electricity and gas are delivered only by the Distribution Utility. Thus, consumers who purchase retail electricity or natural gas services from an ESCO still receive their energy over the distribution system (the wires or pipes) that are owned and maintained by their local Distribution Utility. The Distribution Utility remains responsible for periodically reading ESCO consumers' meters to determine their usage amounts and for billing consumers for both the utility's Delivery Service Charges and the ESCO's Commodity Service Charges.²

19. The UBP requires that consumers solicited by an ESCO receive certain notices. During any in-person consumer solicitation, the UBP requires ESCOs or their sales representatives to provide consumers with the ESCO Consumers' Bill of Rights Notice and Customer Disclosure Statement,³ along with the contract terms and conditions, prior to obtaining the consumer's acceptance of an ESCO offer. Following telephone enrollments, the UBP requires ESCOs to mail these Notices to consumers.

² Herein, "Commodity Service Charges" means the charges pertaining to the electricity or natural gas product supplied by an ESCO or, for consumers who purchase their energy from the local Distribution Utility, by a Distribution Utility.

³ Herein, the "ESCO Consumers' Bill of Rights Notice" means the ESCO Consumers Bill of Rights required by GBL Section 349-d, and specified in Section 10 of the UBP. "Customer Disclosure Statement" means the recitation of essential contract terms as required by Section 5 of the UBP.

20. In addition, the UBP requires ESCOs to verify certain aspects of telephone enrollments through the use of a Third-Party Verification.⁴ The UBP also provides that when a consumer contracts with an ESCO, the ESCO must notify the Distribution Utility to switch providers.

21. ESCOs' pricing and the services that ESCOs provide have often been unclear to consumers, leading to consumer complaints and repeated amendments to the UBP in order to provide greater protections for energy consumers. In 2019, the PSC concluded that "little has changed in New York's retail access market since 2014, when the Commission observed that complaint rates for the retail access market were high, prices for customers in the retail access market are higher than the utility commodity prices"⁵ As a result of these findings, the PSC implemented numerous additional customer protection requirements and reforms to protect ESCO consumers from, among other things, being misled and exploited.

Major Energy's Business Model

22. Major Energy is an ESCO authorized by the PSC to provide retail natural gas and electricity services to residential and commercial customers in New York State.

⁴ Herein, "Third-Party Verification" or "TPV" means the recorded telephone process described in Section 5, Attachment 1 of the UBP.

⁵ State of New York Public Service Commission, Case 15-M-0127 et al., *In the Matter of Eligibility Criteria for Energy Service Companies*, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process at 10 (Dec. 12, 2019) (footnotes omitted).

23. Major Energy's Distribution Utilities include CenHud, Con Edison, National Fuel, National Grid Long Island, National Grid NYC, National Grid Upstate, NYSEG, Orange & Rockland, and RG&E.

24. Beginning in at least 2012, Major Energy offered consumers a fixed-rate contract for the supply of electric and/or gas services for a period of six, twelve or twenty-four months. After the fixed-rate term of the contract expires, unless otherwise agreed to, the contract renews in certain contracts for the same term at a new fixed rate and in other contracts as a variable rate on a month-to-month basis.

25. Beginning in at least 2011, Major Energy also offered consumers a variable-rate contract on a month-to-month basis that automatically renewed unless a consumer directed otherwise. At present, Major Energy does not offer variable-rate contracts to new customers but continues to service existing contracts.

26. Major Energy buys the electricity and gas it supplies to its customers from the same sources as the Distribution Utilities and other ESCOs. There is no qualitative difference between the electricity and gas supplied by Major Energy and that of its competitors.

27. Promises that consumers would save money—either through cost savings or through the cash value of other services provided—provided the primary economic reason for consumers to switch to Major Energy from their local Distribution Utility or another ESCO. The increased cost of the electricity and gas supplied by Major Energy typically was not offset by the value, if any, of the other services that Major Energy purported to offer.

28. Major Energy solicited new customers through telemarketing and in-person solicitations, and through brochures, postcards, television, radio and online advertising and social media, as well as through marketing agreements with organizations such as the New York Knicks, Rangers and Yankees.

29. From at least 2011, Major Energy's sales representatives pitched Major Energy's services to consumers by telephone or in-person at consumers' homes. At present, Major Energy solicits consumers through its website only.

30. Major Energy provided and/or approved training materials for its sales representatives including sales and Third-Party Verification scripts, background information, brochures and other marketing materials.

31. Major Energy's sales representatives, including all of those employed by any third parties with which Major Energy contracted, acted as agents of Major Energy.

32. Major Energy compensated its sales representatives through commissions, which created powerful incentives for sales representatives to enroll customers and circumstances ripe for fraudulent and deceptive conduct by sales representatives.

33. From at least 2011, Major Energy's sales representatives repeatedly engaged in fraudulent and deceptive business practices.

Major Energy's Fraudulent and Deceptive Practices

34. As set out below, Major Energy made false and misleading savings and price claims through sales representatives performing telemarketing and in-person solicitations and in its advertising. Yet the actual Commodity Service Charges paid by consumers who switched to Major Energy were on average higher than they would have been with their local Distribution Utility. From 2014 until April of 2019, for example, consumers paid millions of dollars more than they would if they had used their local utility for their gas and electric supply instead of Major Energy.

35. As set out below, Major Energy also engaged in a variety of other deceptive practices, including high-pressure sales tactics, switching consumers to its services without their consent (commonly known as “slamming”), thwarting consumers’ ability to cancel their contracts, and violating other consumer-protection provisions of the UBP.

Door-to-door solicitations.

36. Major Energy directed sales representatives engaged in door-to-door solicitations to ask to review consumers’ utility bills for the purported purpose of seeing if consumers qualified for savings.

37. In-person sales representatives routinely accessed consumers living in apartment buildings by waiting for someone to leave the building, entering the building before the door closed, and then knocking on apartment doors. In-person

solicitors also rang numerous buzzers on apartment buildings without identifying themselves, waiting for an apartment owner to buzz them in.

38. Through scripts and other marketing materials mandated by Major Energy, Major Energy directed sales representatives to tell consumers, after being shown a bill, that they qualified for savings. The review of the utility bill was a ruse to give the misleading impression that the representative was calculating savings.

39. Sales representatives gave false reasons to gain access to consumers' utility bills and account numbers such as claiming there was a power problem or a safety issue. In many instances, the account information was then used to switch consumers to Major Energy without consumers' approval (*i.e.* slamming).

40. Major Energy representatives falsely told consumers that Major Energy would lower their energy bills.

41. Major Energy's door-to-door script for fixed-rate contracts directed sales representatives to tell consumers "[w]e are in the area today to see your electric bill to see if we can give you a special fixed rate price protection plan on the supply portion of the bill." After reviewing the bill, the sales representatives were instructed to say, "Great! You qualify for our price protection plan."

42. Similarly, Major Energy's door-to-door script for variable-rate contracts directed sales representatives to tell consumers "[w]e're just stopping by to review your energy bill/s."

43. The sales representatives were also instructed to say—“with confidence”—“I need to see a copy of your ELECTRIC (and/or) GAS bill to see if your household is eligible for possibly getting better energy rates.”

44. After being handed the bill from consumers, the sales representatives were instructed to “take a step back and review [the bill] carefully for five long seconds.” Sales representatives were instructed then to tell customers that they “qualif[ied] for the price protection plan.” Per the script, all consumers were qualified.

45. Door-to-door sales representatives were instructed to give the following pitch concerning their purported price savings: “see BEFORE, there was NO COMPETITION (MONOPOLY COULD CHARGE WHATEVER THEY WANT) so you had no choice, AFTER DEREGULATION, WITH COMPETITION (THE UTILITY MONOPOLY IS BROKEN UP) so you MAY see better rates . . . (See Energy Supply Companies typically have lower costs THAN the BIG Utility, which means savings to consumers” (Emphasis in original.)

46. Major Energy’s sales representatives used a variety of deceptive and high pressure sales tactics in order to make sales. For example, Major Energy directed sales representatives to tell consumers who were not interested in making a switch, “I know you probably think that I’m trying to sell you something . . . actually it’s my job to just make sure that everyone understands their rights under deregulation and gets the savings that they MAY BE MISSING ON YOUR GAS BILL.” (Emphasis in original.)

47. In fact, the purpose of the visit was to make a sale and not simply to provide information.

48. In response to consumers who requested more information before making a decision, Major Energy directed sales representatives to state: “[a]ctually (your local utility) has sent out lots of information Unfortunately many people never took the initiative to get savings that they may be MISSING, that’s why I’m here I don’t know how long this offer will last I’d hate to see you pay more, while your neighbors may be paying less for the SAME EXACT SERVICE!”

(Emphasis in original.)

49. Major Energy also directed their sales representatives to instruct consumers that they “only needed to say ‘yes’” to the questions asked in the TPV call, which occurs after the consumer purportedly has agreed to enroll in the service. The PSC requires TPV calls for the purpose of confirming that consumers understand that they are consenting to enroll with an ESCO, and that they understand the implications of that enrollment. By instructing consumers to answer “yes” to each of the TPV call questions, Major Energy’s sales representatives frustrated the TPV’s intended purpose of ensuring that consumers understand Major Energy’s services and the implications of enrolling.

50. In-person sales representatives also engaged in other deceptive, abusive, and harassing tactics to get consumers to switch their accounts, including misrepresenting their affiliation with the PSC or the utility.

51. For example, many sales representatives gave the misleading impression that they worked for the local Distribution Utility to get a consumer to change service, such as by displaying a badge from a Distribution Utility or by wearing construction hard hats and vests during door-to-door solicitations.

52. In-person sales representatives also took advantage of consumers who lacked the ability and capacity to authorize a change in service. For example, some sales representatives purported to obtain approval to change services from consumers who were not fluent in English—such as from a woman who was prompted by sales representatives to sign a contract that she could not understand because it was written in English and also was instructed to answer “yes” to all of the TPV questions—and from individuals who were not competent to provide such approval—such as an 86-year-old woman with dementia, and from disabled, blind or impaired persons who were unable to read and understand the terms and conditions of the contract.

53. In some cases, sales representatives refused to leave a household until a consumer switched to Major Energy.

54. In other cases, sales representatives falsely told consumers that they had been overcharged because of legislation that President Obama signed in order to convince them to change service.

Telemarketing solicitations.

55. Telemarketing sales representatives also engaged in deceptive practices in order to convince consumers to switch their accounts to Major Energy, including telling consumers that their bill would decrease or that they were guaranteed savings in order to get them to switch, when in fact their bills increased.

56. Telemarketing sales representatives made these deceptive sales pitches to consumers who were not proficient in English and as a result were unlikely to understand what was being offered.

57. In telemarketing scripts, Major Energy directed sales representatives to solicit consumers to “see if you qualify for savings on your gas and electric bill,” “to discuss potential savings,” or to see “if you would like to take advantage of the savings.” These statements gave the misleading impression that Major Energy’s rates would lead to savings, when in reality Major Energy’s rates regularly exceeded the Distribution Utility’s rates, and did not lead to savings.

58. In telephone solicitations to prospective customers involving the promotion of variable-rate contracts, sales representatives repeatedly promised consumers competitive rates that would provide savings.

59. In some telephone solicitations to prospective customers promoting fixed-rate contracts, Major Energy directed sales representatives to pitch “a competitive fixed rate” which they also described as “a plan with a rate that WILL NOT increase and it’s already lower than Con Ed’s And this rate is guaranteed NOT to increase for a year.”

60. In telemarketing sales calls, Major Energy directed sales representatives to ask consumers to provide their account information to determine whether they were entitled to a “savings” or to see if they “qualif[ied].”

61. Sales representatives also were instructed to tell consumers, “if you would like to take advantage of the savings, you will need to locate a copy of your electric bill so I can quickly show you exactly where the savings can be applied.” By demanding access to consumers’ account information, Major Energy also made it easier for its representatives to engage in slamming.

62. Sales representatives also represented themselves as working for a utility in order to gain access to the consumer’s account information for the purpose of engaging in slamming.

63. Major Energy’s telemarketers obtained approvals to switch service from individuals who were not authorized as the customer of record (the individual consumer or business owner named in the Distribution Utility account that has responsibility for payment of the account bills) to consent to the switch.

64. For example, in one instance, telemarketers convinced a consumer’s roommate who was not authorized to make decisions to switch.

65. Indeed, Major Energy’s telemarketing sales scripts did not require sales representatives to ask if the person who answered the sales call was the customer of record or his or her spouse, or whether the person was 18 years old and authorized by the customer of record to consent to the switch.

66. Instead, the scripts directed sales representatives to make affirmative statements such as “you are over 18, the account holder, spouse of the account holder, or authorized to make account decision” without confirming the person’s age or authorization to consent to a change.

67. Sales representatives often failed to ensure that the person consenting to a new provider was authorized to make that decision. Instead, many sales representatives pitched Major Energy’s electric and gas services to household members other than the customers of record or their spouses, and used those individuals’ approvals to effect the provider switch without verifying that the decision was authorized by the customer of record.

68. In many cases, at the conclusion of marketing calls, sales representatives coached consumers on how to answer the TPV questions in order to switch to Major Energy, instructing them to respond “yes” to all questions asked during the TPV portion of the call and to hold any questions until after the TPV call was concluded.

69. Telemarketing sales representatives engaged in other forms of deception in order to convince consumers to switch their accounts to Major Energy. In one instance, telemarketers called an elderly woman late at night while pretending to work for Con Edison and telling the woman that her service would be cut off for non-payment of bills unless she provided her account information and switched to Major Energy.

False and Misleading Advertising.

70. In print advertising distributed to consumers, Major Energy made the false and/or misleading claim that it offered the “best available rates” for gas and electricity

71. In fact, as stated above, consumers repeatedly paid more than they would have paid their Distribution Utility.

72. Major Energy also represented in its print advertising that, “[u]nlike any other ESCO,” Major Energy would give consumers “tools to manage and monitor [their] energy consumption and control [their] costs.”

73. In fact, such “tools” were not effective in monitoring and controlling energy consumption and costs.

74. Moreover, many consumers did not receive such tools.

75. Even if consumers did use the tools, any money saved was *de minimis*.

76. For example, Major Energy offered some consumers energy-efficient light bulbs, which is not a monitoring tool and had a negligible effect on consumers’ energy consumption costs.

Slamming

77. As alleged above, Major Energy repeatedly switched consumers to its own services without their knowledge or consent using a variety of tactics, including obtaining account information under false pretenses and failing to confirm consent from a person authorized to switch services. This practice is known as “slamming.”

78. Major Energy's sales representatives impersonated consumers, including in TPVs, in order to switch consumers' accounts over to Major Energy.

79. Major Energy's own internal investigations of the conduct of its sales representatives reveal numerous examples of misconduct. In one instance a woman consented to switch to Major Energy on a recorded line. However, the account holder was male.

80. In another instance, a sales representative represented that the wife of an account holder had authorized the change to Major Energy. However, the account holder was never married.

81. Another time, a consumer who was switched to Major Energy had in fact been away from her residence for a number of months during the time when she allegedly switched and could not have authorized any change.

82. In telemarketing and door-to-door solicitations, Major Energy encouraged consumers to locate their bills and provide their account numbers in order to determine whether they were eligible for savings. Its sales representatives did not inform the consumers that the account numbers would be used to transfer the consumers' accounts to Major Energy.

83. Major Energy's in-person sales representatives also took pictures of consumers' bills and used their account numbers to switch service without their knowledge.

Failure to Comply with Customer Contact, Renewal and Cancellation Procedures.

84. For fixed-rate contracts not obtained through door-to-door marketing, Major Energy imposed a termination fee, which was the greater of \$500 or the projected amount of natural gas or electricity to be consumed by the customer for the remainder of the term, multiplied by 2 cents per KWh and/or 20 cents per therm. This termination fee was a direct violation of the UBP, which does not allow cancellation fees for these types of sales.

85. Major Energy's sales agreements told customers that they could contact its customer service center Monday through Friday between 8:00 a.m. and 8:00 p.m. However, when some consumers called Major Energy to cancel their contracts, they were unable to reach anyone, and they were unable to leave a message because Major Energy's voicemail box was full.

86. By failing to answer consumers' calls, Major Energy delayed consumers' attempts to cancel Major Energy's service. Major Energy billed consumers for additional months, in some cases compounding the harm suffered due to Major Energy's deceptive and illegal conduct.

87. Major Energy also charged early termination fees to consumers who were unable to terminate their contracts before the applicable deadline because of problems notifying Major Energy.

88. Major Energy was aware of the consistent and systemic fraudulent and deceptive business practices taking place. For example, Major Energy's own records

show that, in response to one consumer’s complaint, a Major Energy representative admitted, “I’ve worked here for a long time. . . . I’ve heard some amazing lies, let me tell you.” Major Energy’s own records also show that another representative freely admitted that Major Energy received a lot of complaints “due to—how do I say it in a nice way—I’m going to be point blank honest—is due to misinformation, shall we say, given by the door-to-door representatives.”

89. As a result of Major Energy’s fraudulent and deceptive business practices, New York consumers lost millions of dollars to Major Energy.

**Count One:
Violation of GBL § 349 Pursuant to Executive Law § 63(12)
(Asserted Against All Defendants)**

90. The OAG realleges and incorporates by reference paragraphs 1–89.

91. Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any person engages in repeated or persistent illegal conduct.

92. GBL Article 22-A, § 349 prohibits deceptive acts and practices in the conduct of any business, trade, or commerce in the State of New York.

93. As set forth in paragraphs 1 through 89, Defendants have repeatedly violated GBL § 349 by engaging in acts and practices including but not limited to: (i) making misrepresentations either expressly or by implication, including (a) that customers will realize savings by switching to Major Energy; (b) that Major Energy’s electricity or natural gas service rates were the “best available”; (c) that Major Energy and/or its agents are, or are acting on behalf of the Distribution Utility; (d) the rates for retail and/or natural gas services; and (e) that Major

Energy's services charges will not be higher than the Distribution Utility's service charge; and (ii) failing to disclose that (a) Major Energy's service charges may vary from month to month; and (b) the fact that Major Energy customers will continue to be responsible for the Distribution Utility's delivery service charges in addition to Major Energy's commodity service charges; and (iii) switching consumers to Major Energy's services without their consent.

94. By reason of the foregoing, Major Energy has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

95. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

**Count Two:
Violation of GBL § 349
(Asserted Against All Defendants)**

96. The OAG realleges and incorporates by reference paragraphs 1–89.

97. GBL Article 22-A, § 349 prohibits deceptive acts and practices in the conduct of any business, trade, or commerce in the State of New York.

98. As set forth in paragraphs 1 through 89, Defendants have repeatedly violated GBL § 349 by engaging in acts and practices including but not limited to: (i) making misrepresentations either expressly or by implication, including (a) that customers will realize savings by switching to Major Energy; (b) that Major Energy's electricity or natural gas service rates were the "best available"; (c) that Major Energy and/or its agents are, or are acting on behalf of the Distribution Utility; (d) the rates for retail and/or natural gas services; and (e) that Major Energy's services charges will not be higher than the Distribution Utility's service

charge; and (ii) failing to disclose that (a) Major Energy's service charges may vary from month to month; and (b) the fact that Major Energy customers will continue to be responsible for the Distribution Utility's delivery service charges in addition to Major Energy's commodity service charges; and (iii) switching consumers to Major Energy's services without their consent.

99. By reason of the foregoing, Major Energy has engaged in repeated and persistent illegal conduct in violation of GBL Article 22-A, § 349.

100. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

**Count Three:
Violation of GBL § 350 Pursuant to Executive Law § 63(12)
(Asserted Against All Defendants)**

101. The OAG realleges and incorporates by reference paragraphs 1–89.

102. Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any person engages in repeated or persistent illegal conduct.

103. GBL Article 22-A, § 350 prohibits false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New York.

104. As set forth in paragraphs 1 through 89, Defendants have repeatedly violated GBL § 350 by engaging in acts and practices including but not limited to: (i) making misrepresentations either expressly or by implication, including (a) that customers will realize savings by switching to Major Energy; (b) that Major Energy's electricity or natural gas service rates were the "best available"; (c) that Major Energy and/or its agents are, or are acting on behalf of the Distribution

Utility; (d) the rates for retail and/or natural gas services; and (e) that Major Energy's services charges will not be higher than the Distribution Utility's service charge; and (ii) failing to disclose that (a) Major Energy's service charges may vary from month to month; and (b) the fact that Major Energy customers will continue to be responsible for the Distribution Utility's delivery service charges in addition to Major Energy's commodity service charges; and (iii) switching consumers to Major Energy's services without their consent.

105. By reason of the foregoing, Major Energy has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

106. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

**Count Four:
Violation of GBL § 350
(Asserted Against All Defendants)**

107. The OAG realleges and incorporates by reference paragraphs 1–89.

108. GBL Article 22-A, § 350 prohibits false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New York.

109. As set forth in paragraphs 1 through 89, Defendants have repeatedly violated GBL § 350 by engaging in acts and practices including but not limited to: (i) making misrepresentations either expressly or by implication, including (a) that customers will realize savings by switching to Major Energy; (b) that Major Energy's electricity or natural gas service rates were the "best available"; (c) that Major Energy and/or its agents are, or are acting on behalf of the Distribution

Utility; (d) the rates for retail and/or natural gas services; and (e) that Major Energy's services charges will not be higher than the Distribution Utility's service charge; and (ii) failing to disclose that (a) Major Energy's service charges may vary from month to month; and (b) the fact that Major Energy customers will continue to be responsible for the Distribution Utility's delivery service charges in addition to Major Energy's commodity service charges; and (iii) switching consumers to Major Energy's services without their consent.

110. By reason of the foregoing, Major Energy has engaged in repeated and persistent illegal conduct in violation of GBL Article 22-A, § 350.

111. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

**Count Five:
Violation of Executive Law § 63(12)
(Asserted Against All Defendants)**

112. The OAG realleges and incorporates by reference paragraphs 1–89.

113. Executive Law § 63(12) defines “fraud” or “fraudulent” to “include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

114. As set forth in paragraphs 1 through 89, Defendants have repeatedly engaged in fraudulent conduct by engaging in acts and practices including but not limited to: (i) making misrepresentations either expressly or by implication, including (a) that customers will realize savings by switching to Major Energy; (b) that Major Energy's electricity or natural gas service rates were the “best

available”; (c) that Major Energy and/or its agents are, or are acting on behalf of the Distribution Utility; (d) the rates for retail and/or natural gas services; and (e) that Major Energy’s services charges will not be higher than the Distribution Utility’s service charge; and (ii) failing to disclose that (a) Major Energy’s service charges may vary from month to month; and (b) the fact that Major Energy customers will continue to be responsible for the Distribution Utility’s delivery service charges in addition to Major Energy’s commodity service charges; and (iii) switching consumers to Major Energy’s services without their consent.

115. By reason of the conduct alleged above, Major Energy has engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

116. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

**Count Six:
Violation of Uniform Business Practices
Pursuant to GBL § 349-d
(Asserted Against All Defendants)**

117. The OAG realleges and incorporates by reference paragraphs 1–89.

118. GBL Article 22-A, § 349-d(9) empowers “[t]he attorney general, upon his or her own motion[,]” to “bring a civil action against any energy services company that violates any provision of this section” and to obtain restitution, civil penalties, costs and attorney’s fees.

119. “Any contract for energy services which does not comply with the applicable provisions of” GBL § 349-b “shall be void and unenforceable as contrary to public policy.” GBL § 349-d(8).

120. GBL § 349-d requires the following:

- a. “Any person who sells or offers for sale any energy services to a customer for or on behalf of an ESCO shall (a) properly identify himself or herself and the energy services company or companies which he or she represents; (b) explain that he or she does not represent a distribution utility; (c) explain the purpose of the solicitation; and (d) provide each prospective customer with a copy of the ‘ESCO consumers bill of rights’ . . . ; and (e) provide any written materials, contracts, and the ‘ESCO consumers bill of rights’, in the same language utilized to solicit the prospective customer.” GBL § 349-d(2).
- b. “No person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services.” GBL § 349-d(3).
- c. “No contract for provision of energy services by an ESCO shall require the customer to pay any fee for termination or early cancellation of a contract in excess of either (a) one hundred dollars for any contract with a remaining term of less than twelve months; (b) two hundred dollars for any contract with a remaining term of twelve months or more; or (c) twice the estimated bill for energy services for an average month.” GBL § 349-d(5).

121. By and through their conduct, Major Energy has violated each of the above-identified provisions of GBL § 349-d.

122. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

**Count Seven:
Violation of Uniform Business Practices
Pursuant to Executive Law § 63(12)
(Asserted Against All Defendants)**

123. The OAG realleges and incorporates by reference paragraphs 1–89.

124. Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any person engages in repeated or persistent illegal conduct.

125. GBL § 349-d requires the following:

- a. “Any person who sells or offers for sale any energy services to a customer for or on behalf of an ESCO shall (a) properly identify himself or herself and the energy services company or companies which he or she represents; (b) explain that he or she does not represent a distribution utility; (c) explain the purpose of the solicitation; and (d) provide each prospective customer with a copy of the ‘ESCO consumers bill of rights’ . . . ; and (e) provide any written materials, contracts, and the ‘ESCO consumers bill of rights’, in the same language utilized to solicit the prospective customer.” GBL § 349-d(2).

- b. “No person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services.” GBL § 349-d(3).
- c. “No contract for provision of energy services by an ESCO shall require the customer to pay any fee for termination or early cancellation of a contract in excess of either (a) one hundred dollars for any contract with a remaining term of less than twelve months; (b) two hundred dollars for any contract with a remaining term of twelve months or more; or (c) twice the estimated bill for energy services for an average month.” GBL § 349-d(5).

126. By reason of the foregoing, Major Energy has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

127. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

**Count Eight:
Violation of Uniform Business Practices
Pursuant to Executive Law § 63(12)
(Asserted Against All Defendants)**

128. The OAG realleges and incorporates by reference paragraphs 1–89.

129. The Uniform Business Practices (UBP) promulgated by the State of New York Public Service Commission (Case 98-M-1343) sets forth, *inter alia*, “Marketing Standards” that are legally applicable to ESCOs and ESCO marketing representatives.

130. The applicable Marketing Standards include the following.
- a. For all door-to-door solicitations, the UBP requires that marketing representatives:
 - i. “Introduce him or herself with an opening statement that identifies the ESCO which he or she represents as an Energy Services Company, identifies him or herself as a representative of that specific ESCO; explains that he or she does not represent the distribution utility; and explains the purpose of the solicitation.”
 - ii. “Where it is apparent that the customer’s English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO marketing representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative shall either find a representative in the area who is fluent in the customer’s language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer.”

- iii. “An ESCO marketing representative must leave the premises of a customer when requested to do so by the customer or the owner/occupant of the premises.”
- b. For all telemarketing solicitations, the UBP requires that marketing representatives:
 - i. “Never represent that the ESCO marketing representative is an employee or representative or acting on behalf of a distribution utility.”
 - ii. “State the purpose of the telephone call” and “[e]xplain the purpose of the solicitation.”
 - iii. “Where it is apparent that the customer’s English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative will immediately transfer the customer to a representative who speaks the customer’s language, if such a representative is available, or terminate the call.”

131. For all consumers, their “enrollment is only valid with an independent third party verification” in conformance with the UBP.

132. Under the UBP, ESCOs are generally prohibited from:

- a. “[E]ngag[ing] in misleading or deceptive conduct as defined by State or federal law, or by Commission rule, regulation or Order,” and
- b. “[M]ak[ing] false or misleading representations including misrepresenting rates or savings.”

133. By reason of the conduct alleged above, Major Energy has have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

134. Defendant Via Renewables is a necessary party for complete relief and is liable for this illegal conduct as a relief defendant.

Demand for Relief

Wherefore, the OAG respectfully requests an order and judgment:

1. Enjoining Major Energy from violating Executive Law § 63(12) and GBL Article 22-A, §§ 349, 350 and 349-d, and from engaging in the fraudulent, deceptive, and illegal acts or practices alleged in the Complaint;
2. Ordering Defendants to pay restitution and damages to consumers injured by Major Energy’s fraudulent, deceptive, and illegal acts or practices;
3. Ordering Major Energy to disgorge all ill-gotten profits;
4. Ordering Via Renewables to disgorge all funds and assets, or the value of the benefit received from the funds an assets, traceable to Defendants’ fraudulent, deceptive, or illegal acts or practices;

5. Declaring all contracts for energy services found in violation of GBL § 349-d to be void and unenforceable under GBL § 349-d(8) at the option of consumers and enjoining Defendants from enforcing such contracts;
6. Ordering Defendants to produce an accounting of monies collected from New York consumers pursuant to the fraudulent, deceptive, or illegal conduct alleged in the Complaint;
7. Granting Plaintiff civil penalties up to \$5,000 per violation of GBL Article 22-A pursuant to GBL § 350-d;
8. Granting Plaintiff civil penalties up to \$1,000 per violation GBL § 349-d pursuant to GBL § 349-d(9);
9. Ordering Defendants to pay statutory costs pursuant to CPLR § 8303(a)(6);
10. Ordering Defendants to pay the OAG's costs and reasonable attorney's fees under GBL § 349-d(9); and
11. Granting such additional relief as the Court may determine to be just and proper.

Dated: January 19, 2022
New York, NY

Respectfully submitted,

Attorneys for the People of the State of New York

LETITIA JAMES

Attorney General of the State of New York

Jane M. Azia (New York Bar Number: 1539600)

*Bureau Chief for the Bureau of Consumer Frauds
and Protection*

Laura J. Levine (New York Bar Number: 2337368)

*Deputy Bureau Chief for the Bureau of Consumer
Frauds and Protection*

/s/ Joseph P. Mueller

New York Bar Number: 5079389

Assistant Attorney General

Office of the Attorney General

28 Liberty Street

New York, NY 10005

Telephone: (212) 416-8321

Fax: (212) 416-6003

Email: joseph.mueller@ag.ny.gov